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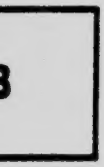

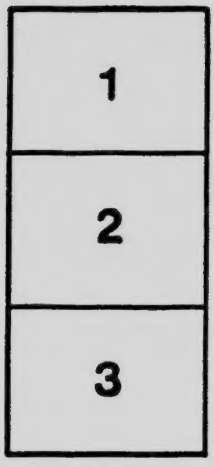

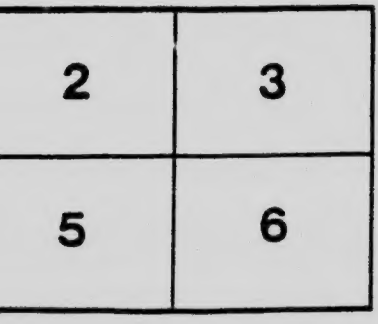

CORRESPONDENCE.

Relating to a claim of Mr. H. B. Higginson and QUEEN'S UNIVERSITY against the Government of Canada. Printed to afford information respecting the character and merits of the claim.

Submitted by the Trustees in whom the claim is in part vested in behalf of the University.

KINGSTON, December 1903.

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A

Letter to the Prime Minister with summary explaining the general character of the claim.

Queen's University, Kingston.
June 25th, 1903.

To the Right Honourable
SIR WILFRID LAURIER,
Prime Minister, Government of Canada.

SIR :—The undersigned have the honour, on behalf of Queen's University, to submit a claim now vested in them as Trustees for the University.

The claim is unique and entirely exceptional in its character. The minimum claim has been placed by an officer of the Government (Mr. Frank Shanly) at $12,752.15; it arose in connection with the building of the bridges on the Intercolonial Railway by Mr. H. B. Higginson, of Liverpool, England. While the claim itself is comparatively small Mr. Higginson's service were of great public benefit as he was in part instrumental in saving the country an expenditure which cannot be placed at less than a million dollars ($1,000,000). But for his services as an accessory, the bridges on the line would, in all probability, have been built of wood and by this time would have required twice renewal. The facts of this extraordinary case are disclosed in authentic papers in the possession of the undersigned which they desire to bring to your attention; at present they ask permission to submit a Summary of the case, together with the four following documents, viz :

1. Letter to the Honourable Mr. Justice Maclennan, Chairman of the Board of Trustees of Queen's University, dated April

16th, 1903, from Sir Sandford Fleming enclosing the letter which follows and asking the assent of the Board to transfer one-half of Mr. Higginson's claim to a Trust for the use and benefit of the University.

2. Letter from Sir Sandford Fleming to Mr. H. B. Higginson, dated March 24th, 1903, setting forth certain circumstances connected with the claim, acknowledging that Mr. Higginson rendered important public services bearing on the claim, and for reasons given, voluntarily offering to pay Mr. Higginson out of his own private means $6376.08, being half the minimum amount which the Government should have paid him many years ago.

3. Instrument dated May 7th, 1903, by which Sir Sandford Fleming binds himself to pay Mr. Higginson $6376.08 on or before July 1st, 1903, and Mr. Higginson transfers half his claim against the Government to Sir Sandford Fleming.

4. Instrument dated May 8th, 1903, by which Sir Sandford Fleming transfers all interest in the claim transferred to him by Mr. H. B. Higginson to the Very Reverend Principal Gordon and Mr. George M. Macdonnell in trust for the use and benefit of Queen's University.

Having satisfied themselves as to the validity of the claim and accepted the trust [illegible] undersigned, in pursuance of their duty to Queen's University, beg leave to bring the case to the attention of the Government, and they respectfully urge that you will cause a speedy and just settlement to be reached.

We have the honour to be

Your Obedient Servants,

DANIEL M. GORDON,
G. M. MACDONNELL.

SUMMARY.

The case may, without impropriety, be summarised as follows:

1. The work for which a claim is made was faithfully executed.
2. This fact has never been disputed.
3. The work has never been paid for.
4. The Canadian public have used the work for 27 years.
5. The work was executed by Mr. H. B. Higginson.
5. No person other than Mr. Higginson has preferred any claim for payment on account of this work.
7. The Canadian people can have no wish to benefit by the work executed without paying for it.
8. Had the same work been done for a private company or individual it would long ago have been paid for.
9. It is difficult to see why it should be less possible to recover a just debt from the Government than from a private firm.
10. Quite apart from and preceding the work for which a small claim is made, Mr. Higginson gratuitously rendered public services of the greatest value.
11. Mr. Higginson materially aided the then Chief Engineer, Sir Sandford Fleming, in having the bridges on the Intercolonial built of iron instead of wood, thus greatly raising the standard of the National Railway.
12. By Mr. Higginson's self-sacrificing assistance a saving to the country of over $1,000,000 has been effected.
13. The prolonged delay in paying his trifling claim has so crippled Mr. Higginson that he still owes $1500 for wages.

14. In view of the facts and for the reasons set forth in the documents herewith, Sir Sandford Fleming has paid or pledged himself to pay Mr. Higginson out of his own pocket half the minimum claim, $6,376.08.

15. Besides the accompanying documents this remarkable case is more fully elucidated in the following and other papers :

(1) The Intercolonial Railway—The Genesis of its Bridges with the official documents laid before Parliament 1875 (pamphlet 50 pages).

(2) Memorial in respect to the unpaid claim of Mr. H. B. Higginson, Oct. 15th, 1897. Chrysler & Bethune, Solicitors (printed separately).

(3) Petition to His Excellency the Governor General from Caroline Higginson, March 24th, 1902.

(4) Acknowledgment from His Excellency's Secretary, March 27th, 1902.

(5) Letter to the Right Honourable Sir Wilfrid Laurier from Miss Higginson. Dec. 17th, 1902.

B

Letter to the Chairman of the Governing Board of Queen's University referred to in foregoing letter to the Prime Minister.

Ottawa, April 16th, 1903.

THE HONOURABLE MR. JUSTICE MACLENNAN,
Chairman, Board of Trustees.
Queen's University.

DEAR SIR :—For some time back I have had it in contemplation to submit a proposal, which in my opinion, must eventually result in advantages to the University if it be followed up.

The accompanying letter to Mr. H. B. Higginson, of 34 Castle St., Liverpool, dated March 24th, 1903, will serve to explain that there is a debt of fully $12,752.15 with a long arrear

of interest thereon owing to him by the public of Canada, the payment of which has been too long deferred by the Canadian Government.

In 1871, acting as a public servant in the public interests, I was largely responsible for the position occupied by Mr. Higginson when the debt was incurred. I cannot, therefore, regard it as creditable to Canada or to myself that he should go unpaid. For these and other reasons I have felt it incumbent on me to propose in the letter referred to, to pay part of the debt, viz., $6376.08 out of my own private means, the only condition imposed being that it shall be regarded as an offer to purchase half of his claim. I have heard from Mr. Higginson in reply to my letter of March 24th, by which I learn that he gratefully accepts the offer. I now feel at liberty to propose to the Governing Board of Queen's University to transfer one-half of the said claim of Mr. Higginson to a Trust for the use and benefit of the University.

I shall be glad to be informed if the Board assents to the proposal.

SANDFORD FLEMING.

C

Letter to Mr. H. B. Higginson from Sir Sandford Fleming referred to in the foregoing letters.

Ottawa, March 24th, 1903.

DEAR H. B. HIGGINSON :—When I wrote you some two weeks back respecting your unpaid claim for work done many years ago in connection with the I.C.R., I think I mentioned that the last reply of Mr. Blair and Sir Wilfrid Laurier, to renewed appeals on your behalf, were not encouraging, in fact so much the reverse, that legal advisers and friends here had come to regard the case as hopeless. That is not my view ; I never despair in any just cause such as I am firmly convinced yours is. I put the matter to myself in this way : The Canadian public are in your debt a sum which has been placed at $12752.15 or more, with interest added, for work honestly performed by you and not paid for. It so happens that you cannot collect the debt by process of law as in ordinary cases, and so you remain unpaid. Is that right ? Is it in accord with the spirit of the Canadian people that they should take a mean advantage of this circumstance and always remain in your debt ? Do they wish to defraud you

out of what is justly owing you? The answer is emphatically, No. I am satisfied that the Government representing the people, must, in the end, come to take a just view of the case and discharge the debt.

I have always taken an interest in your claim, owing to the fact that it was largely through you that a conflict in which I was engaged was won. It is an entirely forgotten conflict, but at the time it was to me a great struggle, as I was compelled, in the true public interests, to fight for a long time single-handed, four powerful commissioners with the Government at their back. It was "the Battle of the Bridges." Contrary to my opinion the Commissioners resolved to have the bridges of the Intercolonial Railway constructed of perishable material. Your connection with the matter originated through my letter to you dated Feb. 6th, 1871, and the history of the conflict with the Commissioners to which it referred is recorded in a pamphlet issued in 1875, designated on the title page "The Intercolonial Railway. The genesis of its Bridges"; that pamphlet and the documents therein contained go to show that I regarded it my duty as a public servant to oppose the Railway Commissioners in the course they had decided upon; but notwithstanding my strong remonstrances the Commissioners pertinaciously adhered to their unwise determination, while on my part I persistently and earnestly pleaded in the interests of public safety and public economy that all the bridges should be constructed of iron instead of wood.

At last the Government yielded to my urgent representation and passed an Order-in-Council on Jan. 19th, 1871, authorizing the substitution of iron for wood in the bridges. A condition was, however, attached to the Order-in-Council; it was provided that the iron bridges should cost no more than wooden bridges. Under the circumstances I felt that a grave difficulty was thrown on me, and one of the first steps taken by me was to enlist your good offices, as set forth in my letter to you on Feb. 6th, 1871. That letter was private or informal, but it was printed by your Solicitors, Messrs. Chrysler & Bethune, along with your memorial to the Governor General in Council dated Oct. 15th, 1897.

The Parliamentary returns of May 1874 go to show that the steps taken led eventually to all the bridges being erected on the Intercolonial Railway of iron, which, including masonry, cost the total sum of $1,274,029.00 and that the same bridges with wooden spans would have cost $1,293,459.00. Difference in favor of iron—$19,430.00.

Thus a clear saving of $19,430.00 in the initial outlay on the bridges was effected by substituting iron for wood. This, how-

ever, was but a small part of the saving effected. As the life of a wooden bridge, estimated at from 12 to 15 years, by this time would have necessitated two new sets of bridges at the cost to the public treasury of from a million to a million and a half dollars. This additional outlay would have been the result had the policy of the Commissioners prevailed. Moreover, the question may well be asked, to what extent might not the perishable wooden bridges have been the direct cause of much loss of life and property, owing to Railway accidents caused by fire or natural decay.

These few words point to the great public importance of the "Battle of the Bridges" in which you took an effective part, and although you have cause to rue the day that you had anything to do with the matter, the fact remains that had you not complied with my entreaties, the condition laid down in the Order-in-Council would not have been complied with, and the Commissioners would probably have triumphed in the struggle But for you and the course followed by you the initial cost of the iron bridges would have considerably exceeded the cost of the wooden spans.

This is amply proved by the tenders themselves. They stood in the following order, viz.:

The Fairbairn Engineering Co. (H. B. Higginson)	$407,014
Clarke, Reevee & Co.	507,665
Campbell, Johnston & Co.	530,455
John Walker	533,257
R. James Reckie	642,065

While your tender brought the price of the 140 iron bridges (ranging up to spans of 100 feet) $19,430 lower than the price of wooden spans, all the other tenders were in excess, ranging from $81,221 to $215,621 higher than spans of wood.

The condition laid down was that the bridges of iron should cost no more than of wood. To accomplish this object you undertook to erect the iron work at so low a price that you would barely have cleared yourself even if you had received prompt payment for all that was due you when the work was done. To keep back a balance owing you of $20,000 or any considerable amount for nearly 30 years, has I am aware, caused you much embarrassment. I understand that notwithstanding all your efforts you have not been able to pay in full all your workmen, that you are still in debt to your headforeman, Thomas Sefton, whom you brought out from England to erect the bridges, and who had to be kept under pay until all was completed. Your daughter has recently told me that you still owe $1500 for wages, almost entirely on account of the extra cost incurred, which forms part of your unpaid claim.

I do not require to be informed that you have done everything in your power to obtain a settlement. You have yourself crossed the Atlantic to press your claim. You have sent your brother for the same purpose. You have employed legal agents to follow it up, but as the Government cannot be sued at law without assent first obtained, and no assent having been given, no proceedings could be taken. Recently you have sent your daughter to Canada and she has remained more than two years pressing the claim, but without any satisfactory result.

The Ministers give no valid reason why they declined to allow the case to go before a judicial tribunal, but I have learned privately why they decline. The claim arose when another political party was in power, and as it was not then settled the present Ministers allege that they should not be expected to take it up, and they practically refuse to deal with it. Much as this view may be dissented from, it seems to be the policy adopted, as when you made a renewed appeal for a hearing a few months ago, the Minister of Railways and Canals in his last letter of date Dec. 4th, 1902, stated "that so far as any action of the present Government is concerned the whole question must be regarded as finally and definitely closed." The policy which appears to be adopted is still further confirmed by the letter of the Prime Minister to your daughter of Feb. 18th, 1903.

Your claim arose during the administration of Sir John Macdonald. It was investigated and reported on favorably in 1880 by Mr. Frank Shanly, who was appointed for such duties by Order-in-Council. As Sir Charles Tupper was then the Minster of Railways, I wrote him a few weeks back, directly after the Premier took the same ground as the Minister of Railways, Mr. Blair, both refusing to allow the claim to be enquired into. Sir Charles Tupper wrote me from Winnipeg on the 9th instant, and I gather from what he states and from what I knew before, that your claim was not paid on Mr. Shanly's report for the reason that it was brought before Council with other claims very much larger than yours, but of doubtful merit, and that in consequence of their character the consideration of all Intercolonial claims was indefinitely postponed. Had yours been separately considered, Sir Charles appears to think that its meritorious character should have entitled it to favorable consideration. Sir Charles is quite clear on one important point, viz:—that the substitution of iron for wooden bridges was largely due to you. Every successive Minister since that period has unfortunately declined to take up your claim, the reason given by each being that it had been dealt with by his predecessor, which, as you know, is an entire mistake as nothing whatever had been done since Mr. Shanly certified that at least $12,752.15 was due you. Sir

Charles confirms my statement of the case and authorizes the use of his letter.

Such is the position of the matter. The claim is very old, the prospect of an immediate settlement is not good, but it is no fault of yours that the claim is old and its age should not militate against its payment. If the claim is just, and I hold it is, its age should rather operate in favour of a speedy settlement. Of this I am perfectly satisfied, the people of Canada who have used your work for 27 years without paying for it, would, if they knew the facts have no desire to keep you out of your money. No man living knows the facts better than I do, and I can only say that I agree substantially with the conclusion reached by Mr. Frank Shanly 23 years ago. During a long career in the public service as an engineer of some standing, many millions of dollars have been paid on my certificate and I can truthfully say that in my belief no part of these millions was more faithfully earned or more justly due than the modest amount claimed by you.

In view of all the circumstances of this extraordinary case, viz: (1) my own position of 20 or 30 years ago. (2) the important public service which you performed at my special request. (3) The aid you rendered me in my conflict with the Commissioners. (4) The loss and inconvenience you have suffered in consequence of the Government so long refusing to pay or allowing an enquiry into your just claim, all awaken in my mind the sense of gratitude which I experienced as a servant of the public when the "Battle of the Bridges" was won. I feel that there is a moral obligation resting on me to come to your relief as far as I am able, and do of my own accord, in part, what the Canadian Government should long ago have done in full. I am, therefore, moved to submit for your acceptance, the following proposal:

I propose to pay you $6,376 08 being one-half of $12,752.15 the minimum sum reported by Mr. Frank Shanly on Nov. 4th, 1880, to be due you by the Government of Canada. This proposal to be regarded as an offer to purchase from you one-half of your claim and the arrears of interest thereon.

I shall be glad to learn that you accept the proposal.

SANDFORD FLEMING.

D

THE BATTLE OF THE BRIDGES.

Referred to in the foregoing.—How Mr. Higginson come to erect the Iron Bridges on the Intercolonial Railway—and the outcome.

The struggle to have the Bridges on the Intercolonial Railway constructed of permanent, instead of perishable material—iron for wood—referred to in the preceding letters is briefly described in the volume published by authority, on the completion of the Railway, entitled "The Intercolonial—a History" (pages 90-100) in these words.

"One important point, on which a serious difference of opinion arose, was in regard to the bridges. In the specification submitted by the Chief Engineer to the Privy Council, the abutments and piers were designed to be constructed of the best description of masonry with iron superstructure.

It appeared to the Chief Engineer that great precautions should be taken with these structures, in order to have them permanent. Iron and stone being the most durable materials, their use would remove risk of accident from fire and from natural decay. And, although, the first cost might be greater, the permanent structure would avoid the constant periodical charge for restoration which wooden work would require. Moreover, the geographical situation of the line admitted of the delivery of materials by sea-going vessels, directly on the line at convenient points; so that the first cost of iron structures would be reduced to the least possible amount.

The Commissioners entertained the opposite opinion, and decided that the bridges should be constructed of wood.

The position was one of difficulty. The Chief Engineer was desirous of avoiding all cause of difference with the Commissioners; but his deliberate opinion was on record. The ground assumed by him had not been lightly taken, and the more the suject was considered by him, the more convinced he felt of the correctness of the principles of construction which he had advocated. No argument, however, which he could advance, appeared to have the least weight with the Commissioners. They had determined to make certain changes; that the recommendations of the Chief Engineer should be set aside; and that iron should not be used, but that timber should take its place.

In Jan. 1869, the Chief Engineer made his first appeal in the matter to the Premier, Sir. John A. Macdonald, and he submitted at length the arguments why iron and not wood should be used. This letter was referred to the Commissioners in the usual course. It has never been replied to and the arguments advanced in that communication, remain to this day, without refutation. But the decision of the Commissioners was sustained. Five bridges, however, were exempted from the principles originally laid down by the Commissioners; otherwise, the order was given that all the bridges should be built of wood. In May, 1870, the Chief Engineer recurred to the question, in a statement prepared for submission to Parliament. A complete list of the bridges were given, and it was there set forth that the cost of constructing them of iron would be but slightly in excess of building them of wood, and accordingly he recommended that iron should be used.

The Railway Commissioners still adhered to the view they had previously expressed, for, in a majority report, signed by Messrs. Brydges, Chandler & McLelan, they repeated the recommendation that with the exception of the five bridges named, wood should be used throughout the line. The report was dated July 3rd, 1870. Mr. Walsh, however, the remaining Commissioner, and Chairman of the Board, on July 3rd, gave his opinion in favor of iron.

The matter was thus again brought before the Government, and on July 7th an Order-in-Council was passed, affirming the decision of the majority that wood should be used. The Chief Engineer took another opportunity of appealing to the authorities on the subject. On July 25th he wrote to the Premier, Sir John A. Macdonald, and on Aug. 22nd to the Commissioners. In the latter communication he asked a delay of ten days for some work in progress, so that the matter could be reconsidered by the Government.

"In Sept. Mr. C. J. Brydges, one of the Commissioners, addressed, on his own account, a communication to the Privy Council on the subject. He argued that the fear of wooden bridges catching fire was groundless; that, in his experience of 18 years as a Railway Manager, he had known no instance of a wooden bridge having been injuriously affected through the cause assigned. He contended that the Chief Engineer's calculations of quantities and cost were erroneous, that the iron bridges would cost at least $300,000 more than the sum named, and that their introduction would probably add $500,000 to the cost of the line and would cause delay and confusion.

Mr. Fleming replied to the communication; he cited two

instances on the Grand Trunk Railway, under the management of Mr. Brydges, having been destroyed by fire but a few weeks before the date of Mr. Brydges statement. Mr. Fleming contended that his estimates were correct, and challenged examination into their accuracy; and he further made a final appeal in favor of iron bridges.

"After an examination which established that the estimates of the Chief Engineer were correct, the Commissioners eventually withdrew their objections and recommended that all the bridges over 60 feet span should be built of iron. But the Chief Engineer persisted in his efforts to have every bridge, down to the smallest span—24 feet—made of iron, and at last, by an Order-in-Council dated May 12th, 1871, authority was given to have them so constructed.

"With the exception of three structures built of wood by direction of the Commissioners, against the protest of the Chief Engineer, all the bridge spans, of whatever width throughout the line, have the superstructure of iron.

Mr. Fleming's original estimate of the cost of bridges with iron superstructure, including masonry, was.....$1,294,607
with wooden superstructure..... 1,293,459
the actual cost erected, completed, with iron superstructure 1,274,077
or twenty thousand dollars less than the original estimate.

The conclusion finally reached was in the interest of public safety and public economy extremely satisfactory. It was due in a very large measure to Mr. H. B. Higginson, who as an accessory played a most important part. This fact is set forth in a statement attached to a memorial to the Governor General in Council dated October 15th, 1897, prepared by Messrs. Chrysler and Bethune, solicitors, from which the following extracts are taken:

"Some three months before the final decision was reached Mr. H. Bingham Higginson, then in England, received a letter dated February 6th, 1871, from the Chief Engineer (Mr. Sandford Fleming) setting forth that he was extremely anxiously to have all the bridges on the Railway constructed of iron in place of wood. He explained the difficulty he had with the Commissioners on this question, and that he felt it to be most important that the Government should receive satisfactory offers from the best iron bridge builders in England to erect in their proper place all the bridges or iron, from end to end of the line, and if possible at less cost than wooden spans.

In compliance with Mr. Fleming's request, Mr. Higginson visited several of the first bridge-manufacturers in England,

among others he called on the Fairbairn Engineering Company. Mr. Fleming was personally known to the head of the firm, the late Sir William Fairbairn. Mr. Higginson had a brother in the establishment, and other friends of Mr. Higginson were personal friends of the leading members of the firm. It is not customary for English manufacturers to undertake the erection of bridge work outside of England; the custom is to deliver the iron work ready for erection in foreign parts F.O.B. at Liverpool or some other port. A serious difficulty consequently presented itself. The prices of wooden bridges erected on the Railway was known to the Government, and in order to compare iron with wooden structures it was necessary to have definite information respecting the price of completed iron bridges. Tenders were accordingly wanted for the iron bridges erected in their permanent position on the railway, but the manufacturers were not willing to undertake any work or responsibility beyond preparing the iron work for shipment.

In order to have the tenders for the erection of the whole work as desired, Mr. Higginson, after much consideration and consultation with the Fairbairn Engineering Company, was induced to assume the risk and responsibility of carrying out that part of the work which the Fairbairn Company would not undertake. He accordingly agreed to take delivery of the iron material at Liverpool, find tonnage for it in Atlantic ships and cover all sea risks, transport it from Quebec, or other landing port, to the different bridge sites on the line of railway, employ skilled mechanics and all other men necessary to erect, paint, and in every respect complete the bridges in their permanent places, ready to be run over by trains, according to conditions stipulated in the specifications; and in order to meet the earnestly expressed aims and wishes of Mr. Fleming, all this miscellaneous work was calculated at the lowest rates for which it could possibly be performed without actual loss.

A combined tender was sent in, in the name of the Fairbairn Engineering Company, but in reality the work to be performed by that Company was to prepare the iron material and place it on board ship at Liverpool; their part of the undertaking terminated at the shipping port in England; the whole responsibility of transporting the material by sea and land, and erecting the bridges on the line of railway, was to be borne by Mr. Higginson.

This combined tender was found to be more than a hundred thousand dollars lower than any other tender. It was accepted (May 12th, 1871) and the construction and erection of all the bridges on the Intercolonial Railway with the exception of three

(awarded to another firm) was to be carried out by Mr. Higginson, in the name of the Fairbairn Engineering Company.

The above brief statement of facts sets forth the circumstances which led to the connection of Mr. Higginson with the construction of the iron bridges on the Intercolonial Railway. It will be obvious that his co-operation with the Fairbairn Engineering Company, as set forth, was one of the means by which the country secured permanent instead of perishable structures. The Parliamentary returns show that the total cost of the bridges, including masonry, would have been with wooden spans, $1,293,459, and that the actual cost with iron spans was $1,274,077. Thus an actual saving was affected and permanent bridges secured.

But the actual saving is much greater than appears. Had the bridges been made of wood it would have been necessary to renew them twice over by this time in order to keep the Railway open for traffic. The restoration of the wooden bridges would have involved an expenditure of over a million dollars. Obviously Mr. Higginson's, public spirited, and it may be added self-sacrificing course, had no little to do with this large saving, as the Railway Commissioners had determined to have perishable structures. Mr. Higginson makes no claim for any part he took in rendering this public service. The question may be asked, should he be severely and pitilessly punished for it, by withholding from him, for so long a period, the small balance due him for the work he actually performed?

E

Communication to the Trustees covering a letter from Sir Charles Tupper of March 9, 1903.

Ottawa, July 3rd, 1903.

THE VERY REVEREND PRINCIPAL GORDON,
MR. GEORGE M. MACDONNELL, } Trustees.

DEAR SIRS :—Agreeably to your request I hereby enclose to you the letter from Sir Charles Tupper dated March 9th, 1903, mentioned by me in my letter to Mr. H. B. Higginson of March 24th, 1903, which you designate document No. 2 in your letter to the Prime Minister of date June 25th.

In order that you may fully understand Sir Charles' letter, it seems to me necessary that I should explain as follows :

Having learned from Miss Higginson that members of the Government declined to consider her father's claim on the

ground that it has been or should have been dealt with by a previous administration, I addressed Sir Charles Tupper on February 20th last on the subject. I stated to him that Miss Higginson had come out from England, at her father's special request, to press his claim; that she had remained in Canada more than two years in a fruitless effort to obtain a measure of justice; that the prospect of a settlement was again indefinitely postponed and that I felt it due to her father and herself that I should place on record all the facts bearing on the claim. As I wished to be absolutely correct in my statement, and knowing that Sir Charles was a member of a previous administration and familiar with the whole matter, I asked him to be good enough to say how far I was correct. Among other things I said to Sir Charles that I understood the reason why payment of Mr. Higginson's claim, when reported favorably on by Mr. Shanley was deferred, was because Mr. Shanly had been asked to report on other claims at the same time; that some of these were very large and of doubtful merit, and as the reports on all these claims were grouped together the Cabinet made it convenient to postpone consideration of the whole. The consideration of these claims was never resumed, and as there was no one to press that Mr. Higginson's claim should be separately dealt with, it was never considered on its merits. Thus it was passed over, and at every subsequent appeal of Mr. Higginson, each new minister put off a hearing with the reply that the claim had already been disposed of. Sir Charles sent me the following reply from Winnipeg dated March 9th, 1903.

DEAR SIR SANDFORD:—I duly received your letter on February 20th and would have replied earlier but I expected to go from Toronto to Ottawa last Monday week night. I was obliged to return to Winnipeg instead. I am sorry to learn that the Government have refused to grant a fiat to allow Mr. Higginson to obtain a judicial decision upon his claim. I have read your statement of the case over carefully, and so far as I am able to form an opinion, I can confirm what you have said. On one important point I am clear—that the substitution of iron for wooden bridges was due to you, Mr. Higginson and myself. * * * * I have no objection to your showing this letter to Sir Wilfrid Laurier.

Yours faithfully,

CHARLES TUPPER.

You will see that Sir Charles confirms my statement of the case as set forth in my letter and the copies of papers which I enclosed to him as above explained. He is clear on one important point, that in the substitution of iron for wooden bridges and the immense saving which has resulted, Mr. Higginson contributed very largely. I enclose Sir Charles' original letter.

Yours faithfully,

SANDFORD FLEMING.

F

Investigation of the Claim by Mr. F. Shanly, Chief Engineer I. C. Railway and his report thereon, Oct. 4th, 1880.

Intercolonial Railway, Chief Engineer's Office,

Ottawa, 14th Feb'y., 1881.

SIR :—Herewith I send you papers in connection with the Higginson case—(Fairbairn Co'y.)—including my Report thereon and other documents refrerred to therein.

I am Sir, Your obedient servant,

(sgd.) F. SHANLY, Chief Engineer.

F. BRAUN, Esq., Secretary,

Dept. Railways and Canals.

Intercolonial Railway—Abstract of H. B. Higginson's (Fairbairn & Co.) Claim—Iron Bridges. Showing amounts claimed and recommended respectively :—

	Nature of Claim.	Amount of Claim.	Amount Recommended.
1.	Rimouski, River Bridge	$ 750 00	$ 750 00
2.	"Grand and "Little Bic" Bridges	350 00	350 00
3.	Metis, River Bridge	800 00	800 00
4.	Casaupscal, Metapedia Bridge	1,300 00	1,300 00
5.	Adams Metapedia Bridge	150 00	150 00
6.	Mid Stream Metapedia Bridge	1,203 00	1,203 00
7.	Clarke's Brook Bridge	25 00	25 00
8.	Christopher's Brook Bridge	182 00	182 00
9.	Nashe's Creek Bridge	8 50	8 50
10.	Jacquet River Bridge	96 00	96 00
11.	Tete-an-gauche River Bridge	200 00	200 00
12.	Middle River Bridge	21 00	21 00
13.	Nipissiquit River Bridge	240 00	240 00
14.	Folly River Bridge	250 00	250 00
15.	North and Salmon River Bridge	500 00	
16.	Trois Pistoles River Bridge	970 00	970 00
17.	Erroneous Deduction	316 65	316 65
18.	Time lost and expenses this delay	108,40 00	5,840 00
19.	Expenses of Agents 1878	1,726 21	
20.	Interest and expenses of Trip 1880		
		$20,128 36	$12,752 15

Amount Recommended $12,752 15

Ottawa, 4th October, 1880.

(Sgd) F. SHANLY,
Chief Engineer, I.C Ry.

H. B. HIGGINSON'S—FAIRBAIRN & CO. CLAIM.

BASIS OF RECOMMENDATION.

No	Nature of Claim	Amount Claimed	Amt. Recommended	References to Evidence
1	Rimouski River Bridge	$ 750 00		Mr. Schreiber, see pages 4 & 5
	Based upon $150 per s m. Extra, caused by delay, and on act of work being done in winter as it does not seem to be denied, and indeed it is evident that work of this kind, done in the winter is more expensive than if done in the milder seasons, or that if the original intention of the contract had been carried out by the Government, as regards time in the completion of masonary there would have been no necessity for winter work I am of opinion that the claim as regards amount, is a fair and equitable one, and I therefore recommend payment accordingly....		750 00	Mr. Higginson, see page 37. Letter No. 923, dated 28th Oct. 1872. Letter No. 927, dated Nov. 16, 1872. Exhibit A. No. 15861.
2.	"Grand" & "Little Bic" Bridges	350 00		Mr. Schreiber, see page 4 & 5.
	A claim on similar grounds as above, the 80 span at $150 and the 110 span at $200. I therefore recommend....		350 00	Mr. Higginson, see page No. 72 Exhibit A.
3	Metis River Bridge.....	800 00		Mr. Schreiber, pages No. 4 & 5
	A claim made upon the grounds similar to the Rimouski Bridge and allowed accordingly, on the basis of $200 per span, 4 spans of 100 ft. each		800 00	Mr. Higginson, page 73. Let'rs No. 2177 dated Nov. 28 1873, and No. 2261, Dec. 13, 1873.
4.	Casaupscal, Metapedia Bridge	1500 00		Exhibit A.
	This claim is for extra transport, by order of Engineer, to facilitate tracklaying. The weight so transported was 200 tons and the distance 27 miles at 25 cents per ton per mile. This would amount to $1350. This bhing in my opinion a tair and equitcharge, I accordingly recommend iis being paid		1350 00	Mr. Schreiber, page No. 5. Mr. Higginson, page No. 79.
5.	Adams' Bridge, Metapedia.	150 00		Mr. Schreiber, Page No. 10.
	This is a claim for delay caused by the masonry not being ready. I consider it a fair one and recommend..		153 00	Mr. Higginson page No. 88. Exhibit A.
6.	Mid Stream, Metapedia, Bridge..	1203 00		Mr. Schreiber,
	$403 of this amount is claimed for iron lost in transport, or in storage			page 10.

H. B. HIGGINSON'S—FAIRBAIRN & CO. CLAIM.

BASIS OF RECOMMENDATION.—Continued.

No.	Nature of Claim.	Amount Claimed.	Amt. Recommended	Reference to Evidence.
	by Government and replaced by Higginson. This is not denied. The balance of the claim is for winter work, four 100 spans at $200 per span, as charged for other bridges of same span, and recommend as above		1203 00	Mr. Higginson, page 84.
7.	Clarke's Brook Bridge.....	25 00		Mr. Higginson page 89.
	No evidence to show that this is not a just claim allowed.....		25 00	
8.	Christopher's Brook Bridge..... ...	182 00		Mr. Schreiber page 13
	Extra time of men brought from Bathurst on Mr. Schreiber's order to expede track-laying $137 and $45 for side-walk all of which was promised should be paid for as extra. I therefore recommend.....		182 00	Mr. Higginson page 90.
9.	Nashe's Creek Bridge.....	8 50		Mr. Schreiber page 14.
	A claim for changing guage acknowledged correct		8 50	Mr. Higginson page 92.
10.	Jacquet River Bridge.....	96 00		Mr. Schreiber page 15.
	No evidence disallowing or against this claim, which is for carrying the bridge iron on scows, in consequence of the embankment being incomplete necessitating double handling, allow		96 00	Mr. Higginson page 93.
11.	Tete-a-gauche River Bridge	200 00		
	In consequence of the embankment not being finished the iron had to be brought in scows to the bridge site and there hoisted hoisted 70 ft. into place at an extra cost to the contractor of $200. This does not seem to be en excessive charge, a d evidence on both sides agree that tne work was done. I therefore allow..		200 00	Mr. Schreiber page 16. Mr. Higginson page 94.
12.	Middle River Bridge	21 00		Mr. Schreiber page 18.
	This is a claim for blacksmith work done for the Engineers and is acknowledged correct, allow..		21 00	Mr. Higginson page 95.
13.	Nipissiquit River Bridge.....	240 00		
	A similar claim to No. 11 and ac-			Mr. Schreiber page 18.

H. B. HIGGINSON'S—FAIRBAIRN & CO. CLAIM.

BASIS OF RECOMMENDATION.—Continued.

No.	Nature of Claim.	Amount Claimed.	Amt. Recommended	Reference to Evidence.
	knowledged by Engineers, allow...		240 00	Mr. Higginson page 95.
14.	Folly River Bridge.....	250 00		
	Claim for delay in commencing work, and when commenced had to stop awaiting masonry by order of engineer, put on extra force and extra scafiolding, allow		240 00	Mr. Schreiber page 18. Mr. Higginson page 97. Exhibit A.
15.	North & Salmon River Bridge	500 00		
	This claim is for iron lost by ice freshet and for winter work. $240 and $260 respectively. The evidence does not bear out either of these claims. The iron was not received from England for about one month after the masonary was ready, and did not arrive until late in the fall, consequently the work was thrown into the winter, thro which the iron was lost, and the work retarded, and made more expensive. Taking the evidence on both sides I must dis allow this claim.			Exhibit A. Mr. Schreiber page 20. Mr. Higginson page 56 & 100.
16.	Trois Pistoles River Bridge.....	970 00		
	This claim is made up by the difference in Autumn and Spring freights. The iron was ordered to be shipped by the Commissioners late in the fall of 1871 when it was not required till late in the Spring of 1872. The contractor should not be made responsible for this and I allow.....		970 00	Mr. Fleming page 38. Mr. Higginson page 105.
17.	Erroneous deduction from payment made by Fairbairn & Co. This claim is based upon a promise made by Mr. Brydges at the time—1873—a Commissioner—that the iron for the Metapedia Bridge should be forwarded free of charge over the I. C. Railway.....	316 65		Mr. Higginson page 108.
	The letter containing this promise is in England, but as there seems to be no doubt about its having been written and not carried out, and Fairbairn & Co. having been charged with the amount, which they again charged to Mr. Higginson, I am of the			Mr. Higginson page 108.

H. B. HIGGINSON'S—FAIRBAIRN & CO. CLAIM.

BASIS OF RECOMMENDATION.—Continued.

No.	Nature of Claim.	Amount Claimed.	Amt. Rec. ommended	Reference to Evidence.
	opinion that the claim is a just one and should be paid.....		316 65	
18.	Time and expenses caused by delay on part of the Govt. in not being ready with masonry	10840 00		
	Mr. Higginson claims that he was detained 3¼ years over and above the date required for completion of his contract consequent upon the masonry and embankments not being completed. He estimates the value of his time and expenses at $4,000 per annum or say $13,000, of which amount Fairbairn & Co, in their settlement with the Govt., accepted $2,160—allowing that sum to Mr. Higginson—leaving $10840 still unsettled—as regards the time 3¼ years claimed as delay, I am inclined to think that this is pushing the matter too close—and assumes that the erection of the Bridges would have been completed but for the delay in the other works, by the autumn of 1872. This is not quite borne out by evidence, as I find on reference to certain documents (No. 11586 Exhibit A,) that some of the bridges were not ready for shipment until 1873—a fact which would, under the most favourable circumstances as to masonry completion in proper time, preclude him from claiming 3¼ years lost time, and would certainly reduce it for one year at least. It is fair to infer, however, that the actual completion of the bridges would not finally release the contractor from the work, but that some little time would be required to wind up the business part of the contract, say 3 months. Thus reducing his time claim to 2 years. The amount claimed as the value of his time and expense is not excessive (4000 per annum) and I therefore allow 2 years at $4000—$8000 less amount received by him on account thro. the Fairbairn Co. liquidation, $2160.....		5840 00	Mr. Fleming page 40. Exhibit A. Mr. Fleming page 40. Mr. Higginson page 110. Mr. Fleming page 40.
19.	Expenses of agents in 1878.....			

H. B. HIGGINSON S—FAIRBAIRN & CO. CLAIM.

BASIS OF RECOMMENDATION—Continued.

No.	Nature of Claim.	Amount. Claimed	Amt. Recommended	References to Evidence.
20.	To press claim paid by him.....	1726 21		
	These claims seem to come under the head of costs, with which I do not consider I am entitled to deal. They being entirely legal questions as is also that of interest, included in No. 20. I do not, therefore, make any allowance.			

Ottawa, 4th October, 1880.

(Sgd) F. SHANLY,
Chief Engineer, I.C. Ry.

G

Instruments vesting half the Higginson Claim in Trustees for the use and benefit of Queen's University, etc.

(1)

THIS AGREEMENT made this seventh day of May, A.D. 1903. (In duplicate).

Between :—HAYNES BINGHAM HIGGINSON, of the City of Liverpool, Merchant, of the FIRST PART—and—SIR SANDFORD FLEMING, of the City of Ottawa, in the Dominion of Canada, of the SECOND PART.

WITNESSETH that whereas the said party of the First part has a claim against the Government of Canada for a debt amounting at least to the sum of $12752.15 for work and services done and rendered by him for and to the said Government in or before the year 1876 in the building and construction of the Intercolonial Railway, together with interest thereon from July 1st in the said year 1876. and whereas on or about the 4th day of Nov. 1880, the late Frank Shanly, Esquire, Civil Engineer, at the request and by the direction of the said Government, reported after investigation, that in his opinion the said sum of $12752.15 was justly due to the said party of the first part from the said Government.

NOW THIS AGREEMENT WITNESSETH that the said party of the first party in consideration of the sum of $6376.08 to be paid to him by the said party of the second part on or before the first day of July next, hereby assigns and transfers to the said party of the Second part one-half of the said sum of $12752.15, with any further sum and one-half of all interest thereon as aforesaid due and owing to the said party of the first part by the Government of Canada. The said parties agree by all lawful means to endeavour to obtain payment of the said debt and interest.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of

ELSIE J. A. SMITH.

HAYNES BINGHAM HIGGINSON
By his attorney
CAROLINE HIGGINSON.

SANDFORD FLEMING.

(2)

THIS AGREEMENT, made in duplicate, this eighth day of May in the year of our Lord, one thousand nine hundred and three.

BETWEEN SIR SANDFORD FLEMING, K.C.M.G., of the First Part; and THE VERY REVEREND DANIEL M. GORDON, Principal of Queen's College at Kingston, and GEORGE M. MACDONNELL, a member of the Board of Trustees of the said Queen's College at Kingston of the Second Part.

WITNESSETH, that whereas the said Party of the First Part has acquired one-half of a certain claim of Haynes Bingham Higginson against the Government of Canada amounting to upwards of Twelve thousand seven hundred and fifty two dollars and fifteen cents ($12752.15) besides arrears of interest. AND WHEREAS Sir Sandford Fleming desires to assign and transfer to Queen's College at Kingston the share of the said claim so acquired by him for the use and benefit of the said College.

NOW THIS AGREEMENT WITNESSETH that Sir Sandford Fleming in consideration of the premises hereby assigns and transfers the said share of the said claim so acquired by him, and all interest thereon and all sums of money that may accrue thereupon to the said Parties of the Second Part absolutely, to hold the same in trust for the sole use and benefit of the said Queen's College at Kingston and not otherwise.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of NOEL FLEMING.

SANDFORD FLEMING.
DANIEL M. GORDON.
G. M. MACDONNELL.

(3)

Leyland's Buildings,
34 Castle Street.
Liverpool, 24th June, 1903.

SIR SANDFORD FLEMING, K.C.M.G.,
Ottawa [illegible]ada.

MY DEAR S[illegible] In accordan[illegible]e with your request in your letter of 13th Ju[illegible]d the agreement of May 7th, entered into

between my daughter Caroline—as my Attorney—and yourself. I beg to advise having drawn upon you for the sum of $6376.08 being one-half of the amount reported by the late Mr. F. Shanly as due me by the Government of Canada for the building and construction of the Iron Bridges on the Intercolonial Railway.

Yours faithfully,

Sgd. H. B. HIGGINSON.

Copy of draft,—accepted and paid by Sir Sandford Fleming.

$6376.08. Liverpool, 24th June, 1903.

On demand pay to my order the sum of Sixty-three Hundred and Seventy-six Dollars and eight cents. Value received as advised in my letter of this date.

To Sir Sandford Fleming, K.C.M.G.,
Ottawa, Ont., Canada.

H. B. HIGGINSON.

H

Letter from the Department of Railways and Canals, Sept. 14th, 1903, in reply to communication from the Trustees to the Prime Minister, June 25th, 1903.

Ottawa, September 14th, 1903.

RE CLAIM OF H. B. HIGGINSON, I.C.R. BRIDGES.

SIR:—Referring to the communication, dated the 25th of June, addressed by yourself and Mr. Macdonnell to the Right Honorable The Premier in the above matter, and to your recent interview with the acting Minister, relating to a certain claim of Mr. H. B, Higginson in connection with the original construction of the Intercolonial Railway, I am directed to say as follow :

Divesting the case, as is, of course, necessary, of any features of personal sympathy with Mr. Higginson's troubles, arising from his connection with the work, the matter resolves itself into a simple instance of performance of a contractual undertaking. The Government had no contract or arrangement of any kind with Mr. Higginson.

The Fairbairn Engineering Company, of England, the contractors for these bridges, tendered for the sum of $407,014., the contract was awarded them and the work was executed. The Company appear to have utilized the services of Mr. Higginson to supervise the erection of such bridges, but in regard of which the Department cannot be expected to have either knowledge or concern.

The final certificate issued for this work, made at the close of 1876, amounted to $454,937.50, of which $445,803.77 had previously been paid. The Company, however, refused to accept the balance, and put in claims for a larger sum on the grounds of (a) *delays caused by the Government;* (b) *Being compelled to store materials*; (c) *Insufficient information as to the time for delivery*; (d) *Expenses through winter work*; (e) *Interest*; (f) *Mr. Higginson's claim for £4,680* ($21,833.) Their entire claim, including the said balance, amounted to £11,213.14.7.

Ultimately, the Company having meantime become *insolvent*, the liquidators sent a representative over to adjust the claim, and a brother of Mr. Higginson came also to assist in the negotiations. As a result a settlement was arrived at for the sum of £3,951.15.1., which was paid over to the representative of the liquidators in 1878, who, acting under Power of Attorney, gave receipt for the same as " in full of all demands against the Government of Canada." This settlement comprised an allowance, for *time and expenses caused by delay*, of $8,160.

In 1879 Mr. Higgginson, as a "subcontractor," wrote asking for information, which, he stated, he could not get from the Company, in regard of the settlement, and in May, 1880, presented a personal claim of $20,128.36 "*expenses incurred and losses sustained*," in which he set down "*for time and expenses caused by delay*, $13,000, *less allowed by Department in* 1878, $2,160."

Evidence was taken and counsel heard in the matter, and on reference to the Department of Justice, it was by them advised that *it was perfectly clear that the Government was in no way liable to Mr. Higginson.* The claim has, nevertheless, been repeatedly urged by and on behalf of Mr. Higginson, and has been made the subject of very extensive examinations by the officials of the Railway, by the Law Officers of the Department and others.

As the result, the Department has always been impelled to but one conclusion, namely, that there is no valid ground whatever for an increase in the amount already paid, *an amount which specially covered his individual claim for services*, though perhaps not to the extent he may have desired.

In making the foregoing digest of the voluminous documents in the matter, the Department has been actuated by the desire that you should be assured that this case has received attention and consideration to an almost exceptional extent, and that the adverse conclusions reached are the result of repeated efforts on its part to ascertain not only the strict legal position of the claim but also to consider its equitable bearings.

In conclusion, I am to say that, under the circumstances,

the Acting Minister finds himself unable to reverse the repeated decisions of his predecessors, namely, that Mr. Higginson has no claim against the Government of Canada.

I am, Sir, your obedient servant,

(Sgd) L. K. JONES,
Secretary.

The Rev. D. M. Gordon, D.D.,
Principal, Queen's University,
Kingston, Ont.

I

Letter from Principal Gordon, to the Acting Minister of Railways, in reply to the foregoing:

Kingston, Oct. 5th, 1903.

THE HON. W. S. FIELDING, M.P.,
Acting Minister of Railways,
Ottawa.

SIR:—Re Claim of H. B. Higginson I.C.R. Bridges. Referring to the letter of Mr. Jones on your behalf in this matter dated 14th Sept. last, I beg to submit for your consideration some observations in regard to the case which are based on evidence in your department.

There was no formal contract executed for the construction of the Bridges in question.

The contract is contained in the specifications and tenders and the acceptance of the tenders. There were two separate tenders, one for the bridge-material F.O.B. at Liverpool, and the other for transportation and erection. The latter tender was in fact Higginson's, but both tenders went in under the name of the Fairbairn Co. A letter of the Fairbairn Co. to the Railway Commissioners of 21st Oct., 1871, intimated to them the arrangement with Higginson for the erection of the bridges. The Government thus knew from the first Mr. Higginson's position.

The claims for damages which arose under these contracts were lodged with the Government on 16th May, 1878. One claim was the Fairbairn Co's, the other was Higginson's. They were fastened together. Higginson had made out his own claim which had no formal heading; the Fairbairn claim was a formal account against the Government.

Higginson's claim was itemized in detail. The Fairbairn claim was made under five general headings. A letter accom-

panied the claims in which reference was made to Mr. Higginson's claim as separate from the other. Two gentlemen came to Ottawa to press these claims at that time, Montague Higginson, a brother of the claimant, and Shepherd, acting for the Fairbairn Co., but Montague Higginson alone represented the Higginson claim (vide evidence before Mr. Shanly, p.p. 60 62).

Owing to delays at Ottawa, Montague Higginson was unable to remain and left before any settlement was effected. The settlement which was made was effected with Shepherd and he had no authority to act for Higginson. As a fact the settlement made included certain items of Higginson's claim, as appears in the subsequent evidence before Mr. Shanly, and these items are credited in the claim presented before him. But the two claims are kept distinct from each other throughout by the acts of the parties and by their mode of dealing with them.

Sir Thomas Fairbairn in a letter of 12th Sept., 1877, to the Governor General bitterly complaining of the treatment of their claims, says, "Mr. Higginson incurred expenses which he has specified in the moderate Bill of Claim for extras already mentioned to the Commissioners.....Mr. Higginson's claim should be considered on its merits."

It is stated in Mr. Jones' letter that a settlement was arrived at in 1878 with the representative of the firm. Shepherd, who made the settlement, did not assume to act for Higginson, and he had no authority to do so ; and whilst the settlement did in fact include some items of Higginson's account for which he has given credit, it in no way dealt with the mass of items which make up his claim. Those items have since been investigated by Mr. Frank Shanly to who m this claim was referred by the Government, and his report finds them a valid claim to the amount of $12752.15 after deducting credits above referred to and aside from certain claims which he considered were not referred to him.

Not only was evidence taken and counsel heard, as stated in Mr. Jones' letter, but the judgment of the Court was in Mr. Higginson's favour as above set forth, and the counsel for the Crown (Mr. Hogg, K.C.) in the course of his argument, spoke as follows : "There is no doubt that his (Higginson's) evidence has not been contradicted in any one particular, that is as to the actual amount of damage that he sustained, with the exception of two items in his claim ; that is for his own loss of time upon the railroad and for his loss of time in prosecuting his own claims against the Government. As to all the other items in the claim, I do not think I could properly contend here that he has not made out a case, which, before a jury or any other tribunal, would entitle him (if he is legally

entitled and has a legal right to prosecute the claim) to be paid."

In view of the above considerations I respectfully submit that Mr. Higginson's claim is well founded and is entitled, on many grounds, to your favourable consideration.

I have the honor to be,

Yours very faithfully,

(Sgd) DANIEL M. GORDON.

K

Letter from the Trustees to the Minister of Railways, with further observations.

Kingston, Ont., December, 1903.

The Honorable W. S. Fielding,
Minister of Railways, &c., &c.,
Ottawa, Ont.

SIR:—We beg to be permitted, in reference to the interview which you kindly gave us in the Higginson case on the 10th of November last, to offer some further observations for your consideration.

In the letter of Mr. Jones on 14th September last, no mention is made of the report of Mr. Shanly, which we conceive to be the most important document in the case. It is impossible that the claimants should rest satisfied with any "digest of the documents" in the matter, which overlooks this one. Had the investigation before Mr. Shanly been one between citizen and citizen it must have carried with it the obligation upon both parties to accept it as a judgment and decision upon their rights in the matter involved, and we are unable to understand why the same obligation should not be recognized by the Crown as applicable in this case. The investigation before Mr. Shanly, so far as appears, had all the elements of a judicial trial. The Crown appointed the Judge, an eminent engineer, most competent to try the question. Mr. Higginson came from England to prosecute his case before the tribunal appointed by the Crown. Counsel were employed and witnesses summoned to give evidence on oath. These proceedings were affected at great expense to Mr. Higginson; and, so far as appears, the investigation was as complete as any trial by any tribunal known to the law. Why the judgment reached by Mr. Shanly should not have the effect of an ordinary judgment does not appear. It was not an academic investigation, so far at least as the claimant was concerned. $20,000 represented to him the whole fruit of years of labor. He was seeking to recover it in the only way open to

him. The Government were aware of his position, and may we be pardoned for saying it, there can have been no intention to trifle with him. The finding of Mr. Shanly awarded him a sum of money, which in the ordinary course of things became payable by the Crown to him. We beg to repeat that Mr. Shanly's report is the main document in the case requiring to be dealt with by the officers of the Government, and no investigation can satisfy justice which ignores it.

Mr. Jones' letter states that more recently the Department of Justice advised that it was perfectly clear that the Government was in no way liable to Mr. Higginson, but what Mr. Lash actually did say was—"*From the papers sent*, it seems perfectly clear that the Government are not in any way liable to Higginson, as all their dealings with respect to the bridges were with the Fairbairn Engineering Company. Mr. Higginson was merely the agent or the representative of that Company, and he does not contend that he personally had any contract with the Government." We humbly submit that the actual facts regarding Mr. Higginson's relation to the matter as set forth in the letter to you of 5th of October last cannot have been disclosed in the papers before Mr. Lash. We are convinced that the officers of the Government have misapprehended Mr. Higginson's position in the matter, and also the character of the claim. They have taken it to be merely an ordinary sub-contractor's claim against a Government contractor, which it most clearly is not. Mr. Higginson had no claim against the Fairbairn Company in the matter. He did not do the work for them, but for the Government directly, and he, not they, is alone entitled to be paid for it, and yet in the recommendation to Council in this matter in 1888, the claim is rejected on the ground "that it would be a most dangerous and improper course to adopt to admit a double liability, namely, both to the contractors and their agent however greatly such agent may have suffered through the default of the contractor, or through the failure of his own private arrangements in regard to such contract." Had the facts set forth in the letter to you of 5th October been before Council we do not think this recommendation could have been adopted.

In this case there has been no suffering through the default of any contractor, although it is true that Mr. Higginson has suffered grieviously and long, through the failure, as we think, of the officers of the Government to understand his true position. Indeed, the only full inquiry into the merits of this singular case was that by Mr. Shanly. The repeated decisions of the officers of the Government upon it have not dealt with its merits, but have dealt with technical objections and difficulties which appear to stand in its way.

Our contention is that work was done by Mr. Higginson for

the Government of Canada; that neither he nor any other party was ever paid for the work; that no other party makes claim and that he alone is entitled to payment for it; that his claim was investigated by a tribunal appointed by the Government, and was sustained almost in its entirety; that this judicial award has been apparently ignored by the officers of the Government in their consideration of his claim.

Looking to the orgin of this remarkable claim as set forth in the public records and having regard to the public services rendered by Mr. Higginson related in the letter of Sir Sandford Fleming of March 24, 1903, and other documents, we humbly think that the claimant has an indisputable right to just, even generous, treatment. We therefore respectfully urge upon your consideration two alternative courses to dispose of this matter. (1) A reference to Judge Burbidge as Arbitrator or (2) A fiat to send it to the Exchequer Court, at the same time waiving the Statute of Limitations and so placing the claimant in the position he would have occupied had a fiat been granted in 1881.

We have the honor to be, Sir,

Your obedient servants,

DANIEL M. GORDON,

G. M. MACDONNELL.